In the High Court of Judicature for Rajasthan
Jaipur Bench
**
Cr. Msc. Petition No.2045/2007
Jai Prakash & Oarmeshwari ***Versus*** State

Date of Order ::: 03/12/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. A.K.Gupta, for petitioners
Mr. Arun Sharma, Public Prosecutor
Mr. Anil Upman, for complainant

Instant petition U/s 482, CrPC has been filed assailing order dt.16/11/2007 in Sess. Case No. 24/06 whereby Addl.Sess. Judge No.1, Kishangarhbas (Alwar) rejected petitioner's application U/s 70(2) read with S.71 & 319(2) CrPC for converting non-bailable warrants into bailable.

Initially challan was filed against accused (Suresh & Pavan) for offences U/Ss 302/120-B IPC who are facing trial in sessions case. Pending trial, application was filed U/s 319, CrPC on which the trial Judge took cognizance against instant petitioners as well fr offences U/Ss 302/120-B IPC vide order dt.15/06/07.

Counsel appearing for complainant brought to the notice of this Court that immediately after the trial Judge took cognizance against the petitioners they approached this Court for grant of bail U/s 438, CrPC, which was rejected and and revision was also

preferred before this Court against order taking cognizance that too also failed; as such they have filed instant application for converting non-bailable warrant into bailable one but the same was rejected by trial Judge vide order impugned.

Counsel for petitioner submits that the Apex Court in a recent judgment in **Indermohan Goswami Vs. State of Uttaranchal (JT 2007(11) SC 499=(2007(V) AD (Cr)(SC) 369)** has considered in details in regard to circumstances necessitating issuance of arrest warrants as it is only to ensure presence of the accused and ultimately observed ad infra:

> "**55**. **In complaint cases**, at the first instance, the court should direct serving of the summons alongwith the copy of the complaint. If the accused seem to be avoiding the summons, the Court, in the second instance should issue bailable warrant. **In the third instance, when the court is fully satisfied that the accused is avoiding the courts proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to**. Personal liberty is paramount, therefore, **we caution courts at the first and second instance to refrain from issuing non-bailable warrants**."

In **State of UP Vs Poosu (1976(3) SCR 1005** referred to in **Indermohan Vs. State UC** (supra), Apex Court

observed ad infra:

> “.. Broadly speaking, t**he court would take into account the various factors such as the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, larger interest of the public and the State**.”

This court considered submissions made and so also the order impugned. The trial Judge took cognizance of offences U/s 302/120-B, IPC against petitioners vide order dt.15/06/07 and Suresh & Pavan (accused) against whom initially challan was filed , are facing trial and are in judicial custody as informed to this Court. The trial Judge in the facts & circumstances of instant case, considered it proper to ensure presence of petitioners and since the trial is in progress and on their being made accused, pending trial, statements of prosecution witnesses can be recorded in presence of petitioners, as well. Vide order impugned, it has been observed by the trial Judge that no one prevents petitioners from surrendering before the Court and take proper steps available under law. This Court does not find any infirmity which may call for interference in the order impugned; and that apart, particularly in

addition to the facts (supra) when their bail application U/s 438, CrPC and also revision petition against order of taking cognizance have been rejected by this Court. In the light of what has been said (supra), judgment on which Counsel placed reliance in **Indermohan Vs. State of UC** (supra) is of no assistance for the reason that it only lays down guidelines in complaint cases only and held that non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. Apex Court also observed ad infra:

> "**56...** There cannot be any straight jacket formula for issuance of warrants but as a general rule, **unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law**, issuance of non-bailable warrants should be avoided."

Consequently, misc. petition fails and is hereby dismissed alongwith stay petition.

(**Ajay Rastogi), J.**